

Paid Amt \$ 405<sup>00</sup> Date FEB 15 2024  
Receipt # 3-0470 Initials WJL

Patricia Halstead, Esq.  
Halstead Law Offices  
615 S. Arlington Ave.  
Reno, NV 89509  
(775) 322-2244  
Fax: (775) 465-4144  
[phalstead@halsteadlawoffices.com](mailto:phalstead@halsteadlawoffices.com)  
Attorney for Carol Gauler, Personal Representative

___ Filed ___	Received ___	Entered ___	Served On ___
Counsel/Parties of Record			
<b>FEB 15 2024</b>			
Clerk US District Court District of Nevada			
By: _____		Deputy _____	

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CAROLE S. GAULER, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
PAUL L. KLEIN,

Case No.: **3:24-cv-00082**

**COMPLAINT**

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,  
Department of the Treasury;  
DANIEL WERFEL, in his official capacity  
as Commissioner of Internal Revenue Service;  
DOES 1-X,

Defendant.

Plaintiff Carole S. Gauler, in her capacity as the Personal Representative of the Estate of Paul L. Klein, by and through counsel Patricia Halstead of Halstead Law Offices, hereby alleges and complaints against Defendants as follows.

**PARTIES**

1. At all relevant times herein Carole S. Gauler is a resident of the State of Nevada and a duly authorized representative of the Estate of Paul L. Klein ("Ms. Gauler").





1           9.     On March 4, 2020, the Governor of California, Gavin Newsom, proclaimed  
2 a state of emergency based upon Covid-19, and on March 19, 2020, Governor Newsom  
3 issued a stay-at-home order by and through Executive Order N-33-20.

4           10.    On March 11, 2020, the World Health Organization declared Covid-19 a  
5 global pandemic and stay-at-home orders spread throughout the United States.

6           11.    On March 30, 2020, Mr. McGowan completed an Amended United States  
7 Estate (and Generation-Skipping Transfer) Tax Return on behalf of the Estate (the  
8 "Amended Return"), which established that a refund is due to the Estate in the amount  
9 of \$428,873 (the "Refund"). Mr. McGowan provided the same to Ms. Gauler by mail,  
10 and Ms. Gauler received it within days of its completion. Ms. Gauler then timely mailed  
11 it to the IRS along with a Form 8971.

12           12.    Having timely submitted the Amended Return to the IRS in early April  
13 2020 and not having received the Refund due to the Estate, Ms. Gauler followed up  
14 regularly with Mr. McGowan to see what the delay was, repeatedly surmising to him  
15 that the IRS must have lost the Amended Return given that she had mailed it to the IRS  
16 only days after its completion by Mr. McGowan.

17           13.    Mr. McGowan commenced calling the IRS Estate and Gift Tax Section on  
18 September 17, 2020, and kept a call log evidencing the same.

19           14.    Mr. McGowan was able to get through to the IRS Estate and Gift Tax  
20 Section on September 17, 2020, and documented his call in an email of the same date to  
21 Ms. Gauler by which he wrote, "I finally got through to the IRS estate & gift tax section.  
22 They don't show the supplemental return in their system yet, which they say is not  
23 surprising due to COVID 19 furloughs. Her best guess for a refund check is 3 to 5  
24 months from now."

25           15.    Based upon the time frame estimate for the Refund that Mr. McGowan was  
26 provided by the IRS when he called in September 2020, and because the Refund had not  
27 yet been received, Ms. Gauler emailed Mr. McGowan on February 19, 2021, inquiring if  
28 he thought the "IRS lost us."

1           16.     Based upon Ms. Gauler's inquiry, Mr. McGowan commenced calling the  
2     IRS Estate and Gift Tax Section again on February 19, 2021, and made follow up calls on  
3     February 25, 2021, and March 2, 2021. Mr. McGowan was not able to get through to the  
4     IRS Estate and Gift Tax Section with any of those calls.

5           17.     During the Covid-19 pandemic, taxpayers and tax preparers were  
6     cautioned numerous times not to refile returns as this would only further compound the  
7     severe backlog already faced by the IRS and would potentially cause further delay or  
8     processing complications.

9           18.     Understanding that the IRS did not want returns to be refiled, on March 2,  
10    2021, Mr. McGowan emailed Ms. Gauler and wrote, "I have called the IRS several times  
11    and have not been able to speak with anyone. The first time I was on hold for 2 hours  
12    and then recycled back to the main menu. Correspondence will not be timely answered  
13    either, I do not know what else to do. The IRS is not staffing their normal services."

14          19.     On August 14, 2021, Ms. Gauler emailed Mr. McGowan again inquiring  
15    what could be done about the Refund and asking if it was possible that "the IRS lost it,"  
16    in response to which, via an email of August 17, 2021, Mr. McGowan indicated that there  
17    is no further activity posted by the IRS in relation to the Amended Return; that he could  
18    not successfully get through to the IRS Estate and Gift Tax Section by telephone; that the  
19    time frame within which to file the Amended Return had since passed; that other returns  
20    he was working on from over a year prior had still not been processed; and that it was  
21    his belief that the IRS was simply far behind in their processing.

22          20.     Mr. McGowan continued to attempt to reach the IRS Estate and Gift Tax  
23    Section and was able to eventually get through in August 2021, at which time he was  
24    informed that the Amended Return had not been received by the IRS. As a result, on  
25    August 23, 2021, Mr. McGowan reprocessed the Amended Return and mailed it to Ms.  
26    Gauler to refile with the IRS along with the correspondence that outlined how the  
27    Amended Return had initially been sent but was evidently misplaced or lost by the IRS  
28    during the disruptions caused by Covid-19.



1           21.     On October 27, 2021, Mr. McGowan wrote to Ms. Gauler explaining that he  
2     had reprocessed the Amended Return and prepared an August 23, 2021, letter to the IRS  
3     requesting that the IRS grant reasonable cause for the late filing. Mr. McGowan  
4     provided Ms. Gauler the same who then resubmitted the Amended Return along with  
5     the August 23, 2021 letter drafted by Mr. McGowan to the IRS for processing.

6           22.     Mr. McGowan made attempts to follow up on the resubmitted Amended  
7     Return that were unavailing. He again maintained a call log, which demonstrated calls  
8     were made in June and August of 2022.

9           23.     No response from the IRS in relation to the second submission of the  
10    Amended Return was forthcoming until December 23, 2022, a year and two months after  
11    it was submitted. The response came in the form of a letter dated December 23, 2022, by  
12    which Brian Minnich, Operations Manager Centralized Specialty, indicated that the  
13    Refund would not be allowed because the Amended Return “was filed more than 3  
14    years after you filed your tax return.” No mention is made about the prior timely filing  
15    of the Amended Return and the refiling promulgated by the Covid-19 repercussions, nor  
16    is any mention made of Ms. Gauler’s and Mr. McGowan’s request to allow the late filing  
17    based upon reasonable cause.

18          24.     It is well known and indisputable that the Covid-19 pandemic resulted in  
19    difficulties for the IRS and several reports emerged regarding the treatment of paper  
20    filings, backlogs, and other impacts of the Covid-19 pandemic and, in relation to such,  
21    reference was made in the August 23, 2021, correspondence by which Mr. McGowan had  
22    noted that the Return “was filed during the initial COVID pandemic chaos. Normal IRA  
23    [sic] processing operations were severely disrupted by COVID, and IRS employees were  
24    furloughed. Paper filed returns went unopened and/or unprocessed for many months.  
25    Hundreds of thousands of tax returns, correspondence and myriad other mailings were  
26    piled up, reportedly in trailers. It would be reasonable to expect that numerous  
27    unknown tax returns have been misplaced or lost during this period.”  
28

1           25.     Given the known complication of the Covid-19 pandemic and the fact that  
2 the Amended Return had been timely submitted as explained, the IRS's position is  
3 perplexing. The Refund was validly sought, timely submitted, and the refusal to issue  
4 the Refund is unfair and results in an unwarranted windfall to the IRS of \$428,873 that it  
5 is not in good conscience entitled to retain. The Refund amount properly belongs to the  
6 Estate and the IRS should not be permitted to take advantage of a logistical nightmare  
7 caused by an unprecedented pandemic to deny the Estate funds to which it is rightly  
8 entitled.

9           26.     Based upon the foregoing, on May 11, 2023, Ms. Gauler sought assistance  
10 from the Taxpayer Advocate Service and concurrently sought to obtain the Refund via a  
11 Form 843 Claim for Refund and Request for Abatement (the "Claim Form"), which had  
12 been received by the IRS as confirmed by the Taxpayer Advocate Service. The Claim  
13 Form was sent certified mail through the U.S. Postal Service and was received by the IRS  
14 on May 16, 2023.

15           27.     Although the initial rejection of the Refund by the IRS may be deemed a  
16 denial of the Refund, the Claim Form was sent in for the purpose of exhausting all  
17 administrative remedies and ensuring future court jurisdiction. *See* 26 U.S.C. § 7422(a).

18           28.     To date, the IRS has not responded to the Refund request as submitted  
19 through the Claim Form, mandating the filing of this Complaint so as not to compromise  
20 the applicable statute of limitations.

21           29.     Relevant to Ms. Gauler's claims as stated herein, by the IRS's own statistics,  
22 as of December 23, 2022, there were 1.91 million unprocessed individual returns, which  
23 included tax year 2021 returns and late filed prior year returns, of which 1.49 million  
24 required error correction or other special handling and of which 414,000 were paper  
25 returns waiting to be reviewed and processed. *See* IRS Operations During Covid-19:  
26 Mission-Critical Functions Continue as Updated on January 10, 2023. Those numbers  
27 fail to account for estate returns such as the one at issue and other matters submitted that  
28 were likewise subject to the backlog and the logistical difficulties that resulted from the



1 Covid-19 pandemic. Other publications addressing the Covid-19 pandemic backlog  
2 reported that as of May 1, 2021, the IRS had 8.8 million returns in its Error Resolution  
3 System; 15.8 million unprocessed 2019 and 2020 paper-filed returns; and 5.5 million  
4 returns with processing errors or suspected identity theft issues, rendering over 30  
5 million returns requiring manual processing. *See* Spidell's Federal Taxletter, Volume 9.10  
6 (October 2021). There was also the destruction of 30 million taxpayer documents as  
7 reported by the Treasury Inspector General for Tax Administration in May 2022 the  
8 effect of which led to several articles addressing concerns such as those now raised by  
9 the Estate. *See, e.g.,* Isabelle Marales' October 5, 2022, article for the Independent  
10 Women's Forum titled IRS Destroyed 30 Million Tax Documents and Refuses to Explain  
11 Why. This action by the IRS led to U.S. Senate inquiries; and, although the IRS  
12 attempted to justify its actions in a statement issued May 13, 2022, by claiming only  
13 information returns were destroyed, that can never actually be substantiated.

14 30. The fact of the matter is that Covid-19 had devastating effects and the IRS  
15 should be cognizant of the same and understanding of the consequences of such to  
16 taxpayers and, as relevant hereto, the Estate. This is particularly true when the IRS  
17 extended various tax filing and payment deadlines as a result of the Covid-19 pandemic  
18 but then inexplicably held the Estate to a deadline that had been met through the  
19 original filing but, despite explanation, the IRS would not grant a concession for  
20 reasonable cause as was warranted by the resubmission of the Estate's Amended Refund  
21 when the IRS was unable to locate the original Amended Return filing.

22 31. The difficulties brought on by the Covid-19 pandemic were unprecedented  
23 and the impacts of such were evident and clearly felt in the breakdown of IRS  
24 operations. As such, it is not surprising that the originally filed Amended Return was  
25 not processed for having gone missing in the chaos.

26 32. The Estate must not be made to suffer a loss of \$428,873 for matters that  
27 were entirely out of its control, particularly where the sums are subject to a valid refund  
28

1 and the Estate did not sit on its rights to claim the refund as evidenced by the Amended  
2 Return itself, which was completed on March 30, 2020.

3 33. It would be wholly unjust for the IRS to retain such funds when they are  
4 subject to an established refund. This is particularly true given that the delay was on the  
5 part of the IRS, which has now relied upon the same to severely prejudice the Estate and  
6 retain hundreds of thousands of dollars to which it is not entitled.

7 34. Retaining the refund despite it being validly owed and under the  
8 circumstances is also wholly contrary to the IRS's own Taxpayer Bill of Rights, which  
9 mandates that taxpayers not be obligated to pay more than the correct amount of tax  
10 owing and that taxpayers enjoy the right to a fair and just tax system.

### 11 **FIRST CAUSE OF ACTION**

#### 12 **Refund**

13 35. Ms. Gauler restates allegations 1 through 34 as though fully set forth  
14 therein.

15 36. The Estate is validly entitled to the Refund. In addition to the factual  
16 allegations in support, Defendants are subject to equitable principles precluding denial  
17 of the same including, but not limited to, estoppel and unclean hands.

18 37. The Estate has been harmed as a result of the IRS's failure to issue the  
19 Refund and is entitled to damages accordingly including, but not limited to, recovery of  
20 the amounts subject to the Refund, lost interest, case costs, and attorney's fees.

### 21 **SECOND CAUSE OF ACTION**

#### 22 **Unauthorized Collection (26 U.S.C. § 7433)**

23 38. Ms. Gauler restates paragraphs 1 through 37 as though fully set forth  
24 herein.

25 39. The IRS, by and through its authorized agent, Brian Minnich, Operations  
26 Manager Centralized Specialty, intentionally or recklessly disregarded the Estate's right  
27 to the Refund by, amongst other wrongdoing, ignoring the circumstances relevant to the  
28 request for the same and relying upon inefficiencies created by the IRS itself.



2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## 7

## 8

9

11

13

15

19

21

27

1 to, recovery of the amounts subject to the Refund, lost interest, case costs, and attorney's  
2 fees.

3 **REQUEST FOR RELIEF**

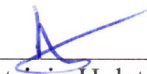
4 WHEREFORE, Ms. Gauler, in her capacity as Personal Representative of the  
5 Estate of Paul L. Klein, prays for judgment in favor of the Estate and against Defendants  
6 as follows:

- 7 1. For a full refund in the amount of \$428,873;
- 8 2. For direct economic damages sustained including, but not limited to, lost  
9 interest;
- 10 3. For case costs and attorney's fees; and
- 11 4. For such other and further relief as this Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, Carole S. Gauler, as Personal Representative of the Estate of Paul L. Klein,  
14 pursuant to FRCP 38(b), demands a trial by jury for all issues so triable.

15 Dated this 15th day of February 2024.

16  
17   
18 Patricia Halstead, Esq.  
19 Attorney for Carole S. Gauler, Personal  
20 Representative of the Estate of Paul L. Klein  
21  
22  
23  
24  
25  
26  
27  
28